

In the Court of Appeals of the State of Alaska

Russel S. Griffin Jr.,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13650**

Order

Motion for Court-Appointed Counsel
and Motion for Waiver of Fees and
Costs

Date of Order: **4/29/2020**

Trial Court Case No. **1JU-12-00943CR**

The Appellant, Russel S. Griffin, Jr. currently represents himself in this appeal. He has filed a motion essentially requesting that an attorney be appointed at public expense to assist him as co-counsel in this appeal. He also requests that he be allowed to proceed at public expense.

But Mr. Griffin has no right to co-counsel status. *See Thomas v. State*, 382 P.3d 1206, 1208 (Alaska App. 2016). Mr. Griffin may choose to represent himself in this appeal, but he also has a constitutional right to counsel to assist him in the appeal. Unless and until he knowingly and intelligently waives that right, any legal proceedings in which he is not represented by counsel would be void. *See Johnson v. Zerbst*, 304 U.S. 458, 467-68; 58 S.Ct. 1019, 1024-25; 82 L.Ed. 1461 (1938) (holding that a deprivation of the right to counsel is equivalent to a lack of jurisdiction).

Mr. Griffin's case is therefore remanded to the superior court, so that the superior court can determine whether Mr. Griffin is willing to enter a knowing and intelligent waiver of the right to counsel. The superior court shall also determine

whether Mr. Griffin wishes to represent himself, and is capable of representing himself, in this appeal.

In remanding this case, this Court acknowledges that under current limitations imposed because of the COVID-19 public health crisis, this hearing should be done telephonically if possible. If the hearing cannot be done telephonically, then the superior court shall inform this Court of this circumstance as soon as possible.

Accordingly, **IT IS ORDERED:**

1. The request to proceed at public expense is **GRANTED**.

2. The motion to have an attorney appointed at public expense to assist Mr. Griffin *as co-counsel* is **DENIED**.

3. This case is remanded to the superior court for the purpose of assessing
(a) whether Mr. Griffin does indeed wish to represent himself in this appeal, and if so
(b) whether he is minimally competent to do so.

4. If Mr. Griffin wishes to represent himself, the superior court shall conduct an inquiry to make sure that he understands the benefits of counsel and the dangers of representing himself, and to make sure that he is competent to represent himself — *i.e.*, capable of presenting a comprehensible argument on appeal

5. If, after Mr. Griffin is advised of the benefits of counsel and the dangers of self-representation, he still wishes to represent himself, and if the superior court concludes that Mr. Griffin is at least minimally competent to do so, the superior court shall inform this Court of these circumstances.

6. If, on the other hand, Mr. Griffin decides not to represent himself, or if the superior court concludes that he is not minimally competent to pursue this appeal on his own, the superior court shall determine whether Mr. Griffin is entitled to the assistance of a court-appointed attorney at public expense. If Mr. Griffin is so entitled, the superior court shall make an appropriate appointment and direct the appointed attorney to promptly file a notice of appearance with this Court.

7. Because Mr. Griffin has a constitutional right to the assistance of counsel on appeal, he must expressly and knowingly waive this right if he wishes to represent himself. Accordingly, if Mr. Griffin is unable to make up his mind about whether to represent himself, this means that he has *not* waived his right to counsel — and, if eligible, he will be represented by a court-appointed attorney at public expense. The superior court shall make an appropriate appointment and direct the appointed attorney to promptly file an appearance with this Court.

Griffin v. State, File No. A-13650
April 29, 2020 - p. 4

8. The superior court's report on these matters shall be transmitted to this Court on or before May 28, 2020. If necessary, this deadline can be extended by the trial court for good cause conditioned upon notice to this Court.

Entered under the authority of Chief Judge Allard.

Clerk of the Appellate Courts

Joyce Marsh, Deputy Clerk

cc: Judge Stephens
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